

### REMARKS/ARGUMENTS

Claims 1-25 are pending in this application. Following entry of the amendment, new claims 26 and 27 will have been added.

As a result of the September 25, 2003 Office Action, claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being obvious over various cited references. In particular, claims 1-3, 7, 9, 10, 22, 23, and 25 have been rejected as being unpatentable over Lerman (U.S. Patent No. 6,378,036) in view of Pence (U.S. Patent No. 6,279,074); claims 11 and 15-20 have been rejected as being unpatentable over Pence in view of Cabrera (U.S. Patent No. 6,490,666); claims 4-6, 8, 12-14, and 24 have been rejected over Lerman in view of Pence and in further view of Cabrera; claim 21 has been rejected as being unpatentable over Lerman, as modified in a manner proposed by the Examiner.

For the reasons set forth below, the claims, as amended, are patentable over the prior art.

#### Claims 4-6, 8, 11-20, and 24

Claims 11 and 15-20 have been rejected as being obvious over Pence in view of Cabrera. Claims 4-6, 8, 12-14, and 24 have been rejected over Lerman in view of Pence and in further view of Cabrera. As noted in applicants' prior response to the March 17, 2003 office action, Cabrera and the present application are commonly assigned to Microsoft Corporation, and they have a common inventor. Thus, 35 U.S.C. § 103(c) prevents the use of Cabrera as the basis for an obviousness rejection. Specifically, section 103(c) provides:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of

section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Given that Cabrera was filed prior to, but issued subsequent to, the present application's filing date, it appears that the Examiner regards Cabrera as prior art under 35 U.S.C. § 102(e). Thus, Cabrera's use to support an obviousness rejection is improper under section 103(c) and should be withdrawn. For this reason, the rejection of claims 4-6, 8, 11-15, 16, 17, 18, 19, 20, and 24 should be withdrawn, and that those claims should be allowed.

Claims 1, 21, 26, and 27

Claim 1 has been rejected as being obvious over Lerman in view of Pence. Claim 21 has been rejected as being obvious over Lerman. The crux of both rejections is that Lerman teaches the use of plural queues and plural media. Lerman does not teach a correspondence between the queues and the media, as recited in both claims 1 and 21. Nor does any of the other prior art cited teach this correspondence.

Moreover, claims 26 and 27 have been added to recite that there is one queue for each of the media. This feature is not taught or suggested in Lerman, or in any of the prior art cited by the Examiner. Lerman teaches the use of three queues for each disk. (See Lerman, col. 4, ll. 5-6). In Lerman, each disk has a "steady-state subscriber queue (SSQ)," a "new subscriber queue (NSQ)," and an "other request queue (ORQ)." (See Lerman, col. 4, ll. 16-33.) While Lerman acknowledges that a greater or lesser number of queues may be used (see Lerman, col. 4, ll. 12-

13), Lerman further states that “*at least two* queues should be used, one for the steady-state requests, and one for all other requests” (Lerman, col. 4, ll. 13-15) (emphasis added).

By contrast, claims 26 and 27, as amended, call for the use of one queue for each medium. Since Lerman states that “at least two queues” should be used, Lerman teaches away from the invention recited in claims 26 and 27, so those claims cannot be found obvious over Lerman. Nor does any of the prior art cited by the Examiner teach or suggest the use of one queue per medium.

For the foregoing reasons, applicants request reconsideration of the rejection of claims 1 and 21, and allowance of new claims 26 and 27.

Claim 2

(2) Claim 2 recites that “each queued request indicates the offset from a predetermined location on a medium at which the requested data object is located,” and that the requests are organized in sequences “whose offsets are monotonically increasing.” None of the cited references teach or suggest this feature. The Examiner’s attempt to read this feature onto Lerman is incorrect. The portion of Lerman cited by the Examiner discusses the fact that queues can be processed in order of an “earliest deadline” (col. 8, l. 57 through col. 9, l. 23), and that the queues themselves can be ordered based on “ascending time deadlines.” A time deadline, however, is not an offset. A time deadline is a time by which work must be completed. An “offset,” as recited in claim 2, is a location on a medium relative to some predetermined location. Neither

Lerman, nor any of the other cited references, teach organizing a request queue in an increasing sequence based on the requested items' offset into a medium.

Claim 3

2 Claim 3 recites "retrieving, from said second medium, the data objects requested on the second queue, the retrieval occurring at least in part concurrently with the retrieval of data objects from the first medium." None of the cited references teach or suggest this feature. The Examiner's attempt to read the quoted feature onto Lerman is incorrect. The crux of the Examiner's argument is that col. 1, ll. 39-42 of Lerman teaches the "concurrently" feature recited in claim 3 and quoted above. That portion of Lerman discusses the fact that subscribers can be served "concurrently" by a video server based on disk bandwidth. Claim 3, however, does not recite concurrent video service; rather, claim 3 recites concurrently (or, more precisely, at least partly concurrently) retrieving items from two media. The mere existence of the word "concurrent" in the prior art does not demonstrate that claim 3 is obvious over the prior art.

Applicants respectfully submit that the Examiner has overlooked this difference between claim 3 and the prior art, and that the rejection of claim 3 is incorrect.

Claim 7

4 Claim 7 calls for "timestamping each of the ... queues," where one of the plurality of queues is "activated based on the timestamps of the respective queues." Thus, there are plural queues, and a particular one of the queues is activated based on its timestamp. The prior art cited

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by the Examiner does not teach or suggest this feature. The Examiner reads the quoted feature onto Pence. However, as previously discussed in response to the March 17, 2003 Office Action, Pence stores all recall requests on a single queue. The portions of Pence cited by the Examiner show that the *requests* may be timestamped, but not that the *queue* itself is timestamped. Since Pence has only one queue, it would be meaningless to timestamp this queue, or to decide which queue to activate based on a timestamp. Thus, the Examiner's finding that claim 7 is obvious over the cited references is incorrect.

#### No New Matter

New claims 26 and 27 are supported by the specification as originally filed, and thus do not constitute new matter. In particular, the subject matter recited in claims 26 and 27 is supported by various portions of the specification, including page 13, lines 13-20.

#### Conclusion

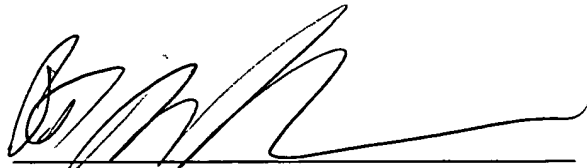
For all of the foregoing reasons, applicants respectfully submit that the pending claims are patentable over the prior art and should be allowed. As discussed above, claims 1-7, 9, 11-21, 24, 26, and 27 have been shown to be patentable over the prior art cited. Moreover, since all of the independent claims have been shown to be patentable, all of the dependent claims are likewise patentable at least by reason of their dependency.

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Thus, applicants submit that this case is now in condition for allowance, and request that the Examiner issue a Notice of Allowance.

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